



2015-046

STATE OF ALABAMA  
OFFICE OF THE ATTORNEY GENERAL

LUTHER STRANGE  
ATTORNEY GENERAL

May 12, 2015

501 WASHINGTON AVENUE  
P.O. BOX 300152  
MONTGOMERY, AL 36130-0152  
(334) 242-7300  
WWW.AGO.ALABAMA.GOV

Honorable Teddy Pouncey  
Chairman, South Dallas Water Authority  
Post Office Box 875  
Selma, Alabama 36702

Newspapers – Public Works Law –  
Advertising – Water Authorities – Dallas  
County

A newspaper meeting the requirements of  
section 6-8-60 of the Code of Alabama is a  
newspaper of general circulation in the  
county for purposes of the Public Works  
Law.

Dear Chairman Pouncey:

This opinion of the Attorney General is issued in response to your request  
on behalf of the South Dallas Water Authority.

QUESTION

May the South Dallas Water Authority advertise  
for sealed bids in *The Huntsville Times*, *The  
Birmingham News*, or the *Montgomery Advertiser*, even  
if the newspaper is not published in the county, and  
still comply with section 39-2-2(a) of the Code of  
Alabama?

FACTS AND ANALYSIS

Your request states as follows:

The South Dallas Water Authority (“Authority”)  
is incorporated as a public corporation pursuant to  
section 11-88-1, *et seq.*, of the Code of Alabama. The  
Authority was organized by the Dallas County  
Commission, which appoints the members of its  
Board. . . . From time to time, the Authority solicits

for sealed bids for public works projects to improve the water system and its services. . . .

Historically, the Authority has advertised for sealed bids using a local paper of general circulation published in Dallas County. Recently, however, the local paper has been charging the Authority advertisement rates that are significantly higher than the rates charged by papers of statewide circulation. For example, in June 2014, the Authority advertised for bids locally and statewide, and discovered the rate of the local paper was *more than ten times the combined rates of three of the largest newspapers in Alabama*, i.e., *The Huntsville Times*, *The Birmingham News*, and the *Montgomery Advertiser*. The cost differential was literally approximately \$1000 compared to approximately \$10,000.

Because the Authority is using public funds, it desires to be a good steward and use less costly alternatives to advertise for sealed bids. Upon information and belief, *The Huntsville Times*, *The Birmingham News*, and the *Montgomery Advertiser* are papers of general circulation in the county. They publish items of interest to the general public, they have more than a *de minimus* paid subscription base in the county, they are read by residents in the county at large, and they are available to any member of the public within the county—each has its own newspaper dispenser in the county.

The Public Works Law, codified in section 39-2-1, *et seq.*, of the Code of Alabama, controls all public works contracts that exceed \$50,000 and requires that such contracts be competitively bid. ALA. CODE §§ 39-2-1 to 39-2-14 (2012 & Supp. 2014). Section 39-2-2(a) provides, in part, as follows:

If the awarding authority is the state or a county, or an instrumentality thereof, it shall advertise for sealed bids at least *once each week for three consecutive weeks in a newspaper of general circulation in the county* or counties in which the improvement or some part thereof, is to be made.

ALA. CODE § 39-2-2(a) (Supp. 2014) (emphasis added).

This Office considered an identical question in our opinion to Honorable Paul Bowlin, Director, Alabama Department of Transportation, dated July 18, 2002, A.G. No. 2002-287. That opinion rejected the claim that *The Birmingham News* is a newspaper of general circulation in Choctaw County, relying on section 6-8-60 of the Code of Alabama. ALA. CODE § 6-8-60 (2014). The *Bowlin* opinion reasoned as follows:

Section 6-8-60 of the Code of Alabama provides that “all publications required by any law” to be published in a newspaper must be published in accordance with the requirements of that section. ALA. CODE § 6-8-60 (1993). Section 6-8-60 requires that the *newspaper must: (1) be printed in English, (2) be of general circulation in the county, (3) have its principal editorial office in the county, and (4) hold a second class mailing permit for a minimum of 51 weeks a year.* *Id.*; see Opinion to Honorable Don Davis, Probate Judge, Mobile County, dated October 30, 2001, A.G. No. 2002-043. *The Birmingham News* does not have its principal editorial office in Choctaw County.

*Bowlin* at 3 (emphasis added). It is noted that section 6-8-60 has since been amended by Act 2012-214 to require a publication class, rather than a second class, mailing permit. 2012 Ala. Acts No. 2012-214, 387, 388. If the three newspapers mentioned do not have their principal editorial offices in Dallas County, the newspapers do not meet the requirements of section 6-8-60 of the Code.

Most recently, section 6-8-60 was reaffirmed as controlling law in our opinion to Honorable Alan L. King, Probate Judge of Jefferson County, dated September 9, 2013, A.G. No. 2013-066. That opinion construed a local act requiring notice of meetings of a commission to be published in a county newspaper. The *King* opinion addressed the similar question of the continued viability of such a requirement in the face of the growing shift of newspapers to digital news coverage on their websites. That opinion acknowledged that newspaper notice is becoming antiquated, but emphasized the plain language of section 6-8-60, which mandates notice “in a paper publication,” not an online newspaper.

### CONCLUSION

A newspaper meeting the requirements of section 6-8-60 of the Code of Alabama is a newspaper of general circulation in the county for purposes of the Public Works Law.

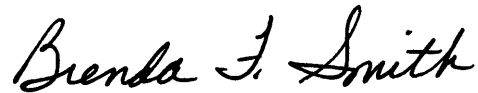
Honorable Teddy Pouncey  
Page 4

I hope this opinion answers your question. If this Office can be of further assistance, please contact Ward Beeson of my staff.

Sincerely,

LUTHER STRANGE  
Attorney General

By:

A handwritten signature in cursive script that reads "Brenda F. Smith".

BRENDA F. SMITH  
Chief, Opinions Division

LS/GWB

1946851/184859